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10-310

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GLEN BROEMER, *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

On Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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UNDER SEAL PROPOSAL

Some of the government's conduct in this case would probably be confidential were it based on mutual consent and otherwise lawful. I believe the government's conduct has been coercive, and otherwise unlawful. My claims, here and in district court, are similar to claims made by plaintiffs in Weissman, v. Central Intelligence (D.C. Circuit, 1977), No. 76-1566 (illegal recruitment) and Barrett v. United States, 689 F.2d 324 (2nd Cir. 1982) (illegal expermentation), though I've added an involuntary servitude claim and contend the government has been wrongfully invoking privileges in a way that intereferes with my substantive constitutional rights; see In re Sealed Case, No. 04-5313 (D.C.Cir. 2007). I believe the writ should be publicly filed as is, though the more prudent course may be to accept this writ under seal, and place it in the public domain later if the Court believes that is warranted.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States can unilaterally re-characterize and adjudicate Petitioner's tax claims, without directly consulting with Petitioner, in coercive conditions and over Petitioner's strident objections?

2. Whether the circumstances under which Petitioner litigated amount to due process failure;

3a. Whether the IRS Appeals Officer erred by failing to consider estoppel and 26 U.S.C. Section 6330(c)(2)(B) to determine whether Petitioner was entitled to a CDP hearing for several tax years at issue.

3b. Whether 26 U.S.C. § 7442 and 26 U. S. C. § 7482(a)

permit the exercise of jurisdiction by the application of equitable estoppel, when failure to invoke estoppel yields a due process violation? Alternatively, whether Congress may enact a system for raising revenue which does not give all aggrieved citizens the opportunity to meaningfully challenge property deprivations before they occur.

4. Whether the doctrine of equitable estoppel can be employed to prohibit government tax collection efforts, where the government has violated Petitioner's right to be free of involuntary servitude and has committed a long series of tortious acts against Petitioner, and failed to compensate Petitioner;

5. Whether the U.S Tax Court and the 9th Circuit Court of Appeals' faulty adjudication of Petitioner's claims, marks such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory power.

LIST OF PARTIES

1) GLEN BROEMER, PETITIONER;
2) COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

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The opinion of the United States Tax Court is reported at T.C. Memo. 2009-72, Broemer v. Commissioner Of Internal Revenue, (March 31, 2009). The 9th Circuit Order summarily affirming the Tax Court's Decision was issued on March 12, 2010, 9th Circuit Case number 09-72467.

STATUTE CONFERRING JURISDICTION

The jurisdiction of this Court to review the Judgment of the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

DATE OF JUDGMENT

On October 10, 2006, Petitioner requested a CDP hearing for the tax years at issue. The CDP hearing was conducted by telephone on April 13, 2007. On May 29 2007 Petitioner brought suit against Respondent Commissioner of Internal Revenue, contesting IRS determinations that Petitioner had a tax debt. On March 31 2009, the U.S Tax Court upheld all IRS rulings and granted the IRS' Motion for Summary Judgment. In July 2009 Petitioner appealed the Tax Court decision to the 9th Circuit. On March 12 2010 the 9th Circuit affirmed the Tax Court decision. Petitioner filed a timely Petition for Re-Hearing and Re-hearing En Banc. On May 24 2010 the 9th Circuit denied Petitioner's Motion for Rehearing En Banc.

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

First Amendment/United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment/United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Thirteenth Amendment/United States Constitution

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

26 U.S.C. § 7442

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

26 C.F.R. § 301.6330-1(e)

See Appendix F, p. 73

26 C.F.R. § 301.6330-1 (i)

A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing.

26 U.S.C. § 6330(c)(2)(B)

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability *for any tax period* if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. (emphasis added)

King v. Collagen Corp., 983 F.2d 1130 (1st Cir. 1993)

When a statute is clear the agency interpretation must give way.

Woods v. Commissioner, 92 T.C. 776, 784-787 (1989).

"[The Tax Court] may not exercise general equitable powers to expand [the Tax Court's] statutorily prescribed jurisdiction"

Freytag v. Commissioner , 501 U.S. 868, 891 (1991):

"The Tax Court [has].. the authority to apply the full range of equitable principles generally granted to courts that possess judicial powers."

Heckler v. Community Health Services, 467 U.S. 51 (1984)

Equitable estoppel is available 'against the government.'

Purcell v. United States, 1 F.3d 932 (9th Cir. 1993)

In a tax case, upon a showing of "affirmative conduct going beyond mere negligence" equitable estoppel is available "against the government"

Estate of Orenstein v. Commissioner, T.C. Memo 2000-150, 2000:

"Tax Court must have the power to consider an equitable estoppel claim, if considering the claim is necessary to the appropriate disposition of the case before it."

Bachner v. Commissioner, 109 T.C. 125, 131 n.7 (1997)

Either party is free to raise equity-based defenses in Tax Court.

Stearns Company v. United States, 291 U.S. 54 (1933)

"He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned"

Broemer v. Commissioner 2009 Tax Ct. Memo LEXIS 70

Application of estoppel requires allegation of affirmative misconduct by IRS.

STATEMENT OF THE CASE

In my hearings I've attested to a process whereby I have been, over the course of many years, used in government operations in a condition of involuntary servitude. In at least some of these cases the use was erroneously sanctioned by judicial officials and regarded institutionally, and fraudulently, as a form of insurance against prosecution for a variety of alleged criminal acts. I have been deprived of economic opportunities and assaulted over the course of this litigation, and while drafting this writ. I am certain these attacks have affected the quality of the final product. The federal government has generally sought to justify its conduct by misstating and concealing facts.

I was advised not to contact the IRS in 1997, long before having a constitutionally adequate understanding of my circumstances. I understood the directive as a sign the federal government had an alternate way of handling my taxes and tax issues, an understanding that has been supplemented and reinforced over the course of many years. I became self-employed in 2003, to avoid workplace abuse and constitutional deprivations (ultimately) attributable to the intelligence community. The federal government and co-conspirators sought to convert this self-employment to government contract work. While self-employed, over the course of years, I was involuntarily employed or used in government

operations in ways harmful to my health and economic well-being.

I routinely performed unusually hard labor while being assaulted near in time to the delivery of "sorry we missed you" slips from the Post Office notifying me of IRS mailings. I, and others, drew the inference that the government considered involuntary use in law enforcement operations to be payment for tax debts. Insofar as I didn't earn more than I needed to pay my bills, wasn't facing levy actions, and insofar as my income was subject to government interference and insofar as some in government stated they would compensate me well for my hardships, I initially didn't have any reason to re-think that assumption, though I was generally contesting government's conduct in federal court. Over the past 7 years I've produced documentation that I've been used and controlled by the federal government for several decades. The federal government has never openly or clearly acknowledged or sought to justify such use. Government agents and employers rarely identified themselves as such and routinely concealed facts to induce my participation in government operations, perhaps unncessarily given the economic coercion. In a few instances it appears that the government ordered or approved of or negotiated punishment of me without my prior knowledge or consent and without subsequent explanation. After collecting

evidence of government impressment schemes, including a scheme to impress me for tax debts, I realized the debts were unjust and fraudulent, and I became concerned that accepting such a payment plan might amount to waiver of my right to litigate related claims in district court, or that it might amount to a waiver of other significant rights. I do not have access to rulings or reasoning regarding my status, and thus must rely on my general sense of legal principles. It may be that the most important arguments relating to my ability to proceed have been made in camera or elsewhere, without my meaningful participation, though I can present documentation under seal demonstrating that the allegations I have heard are fraudulent.

When I publicly challenged my tax debts by requesting an IRS hearing, I was by implication also challenging the government's longstanding treatment of me as impressed. Perhaps for that reason, neither the IRS hearing officer nor the U.S. Tax Court followed the law in adjudicating my tax claims. A series of obvious errors demonstrates my case wasn't taken seriously.

Various government factions have a strong interest in covering up decades of corrupt practices, by whatever means are necessary. I was assaulted repeatedly in the days before the IRS hearing, and was under the influence of a chemical or gas causing an elevated heart rate at my Tax Court hearing. I've been assaulted repeatedly while drafting this

motion, gassed, struck in the head by energy weaponry, and continually shot in and around my eyes. I've also been subjected to subconscious manipulation, and it has become evident that some in government planned this litigation long ago. That having been said, it does appear to me that I have a right to litigate my claims as stated.

The IRS Appeals Office sent Notices of Determination Decision Letters expressing an intent to proceed with levy actions on May 2 2007. On March 31 2009 the Tax Court upheld the IRS decisions, applying the wrong standard of review while relying upon rarely cited and untenable statements of the law and ignoring contrary law. In an Order dated March 12 2010, the 9th Circuit panel ruled that "the questions raised in this appeal are so insubstantial as not to require further argument" ignoring the threshold questions of whether the process was corrupt and violative of my due process rights. On May 24 2010 the panel denied my motion for reconsideration en banc on behalf of the court.

The case presents an important question regarding the right of the government to commandeer a citizen's consciousness for its own purposes. Over the course of my life my most important constitutional rights have been absolutely ignored, far from the statement that the rights guaranteed in the constitution are not absolute. The case also has

far reaching implications regarding the extent to which similarly situated individuals may avail themselves of the court system to complain of rights deprivations. Granting certiorari would also provide the Court with the opportunity to clarify practices in tax cases in the Tax Court and federal courts; there are a surprising number of confusing and contradictory statements relating to jurisdiction, standard of review, and the application of equitable principles, guaranteeing the uneven administration of justice. A system of rules that permits diametrically opposed rulings on dispositive issues isn't a system of rules at all, is a casuistic construct permitting ad hoc decrees. Granting certiorari would also provide the Court with the opportunity to correct its own misstatements of its own use of equitable principles. The Court should set forth rules aimed at the consistent use of equitable principles in all federal courts.

BASIS FOR JURISDICTION

The Tax Court's jurisdiction is stated in 26 U.S.C. § 7442. The U.S. Tax Court heard Petitioner's challenges to the IRS decision in accord with 26 U.S.C.S. § 6330(d)(1). The Tax Court refused to hear Petitioner's appeal re Petitioner's 2001 taxes citing Woods v. Commissioner, 92 T.C. 776, 784-787 (1989). The basis for the federal courts of appeals' jurisdiction over Tax Court decisions is set forth in 26 U. S. C. § 7482(a).

ARGUMENT

I. Important Questions Of Law

Petitioner set forth facts demonstrating a violation of Petitioner's 13th Amendment right against involuntary servitude, requiring the application of estoppel in a tax court proceeding. Petitioner presents a novel and important question of law that the Court should consider. Petitioner was not accorded due process, probably as a result of misconceptions relating to Petitioner's right to proceed.

II. Conflicting And Erroneous Statements Of The Law

The Tax Court has made conflicting statements as to the limits of its jurisdiction. The circuit courts have made inconsistent statements as to the limits of their jurisdiction over the same matters. The Tax Court rulings in my case are not compatible with standard conceptions of due process. The IRS, Tax Court, and 9th Circuit erred in holding that equitable estoppel is available in Tax Court cases only where there is IRS wrongdoing.

III. Right To Self-Representation

I did not consent to an alternate method of adjudication. The government interfered with my right to plead my own case, a right set forth in 28 U.S.C. S 1654 (1982); see also Faretta v. California,

422 U.S. 806 (1975), "Either party... has a natural right to plead his own cause" citing Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Schwartz 316; see also Rand v. Rowland, 154 F.3d 952, (1998). Surely includes the right to be apprised of opposing arguments, and the right to petition without being assaulted.

IV. Due Process Deprivations

Throughout the litigation the government caused or permitted me to suffer daily battery, hampering my ability to articulate an involuntary servitude claim as such and deal with legal intricacies.

I have been denied Due Process as that concept has been defined in Betts v. Brady, 316 U.S. 455, " [due process is to be] tested by an appraisal of the totality of the facts in a given case", and Fuentes v. Shevin, 407 U.S. 67, (1972), "the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner", and Daniels v. Williams, 474 U. S. 327, 331, (1986), the due process clause "serves to prevent governmental power from being "used for purposes of oppression", and Medina v. California, 505 U.S. (1992); the due process clause may be violated by a procedure that "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

V. Involuntary Servitude

In my declarations to the Tax Court I provided evidence of decades of manipulation of my consciousness and direct and indirect interference with my autonomy amounting to a violation of my thirteenth amendment rights. I have been unable to find work away from Defendants for a number of years and was at times forced, at other times fraudulently induced, and at other times tricked into furthering various governmental agendas. I never earned as much in these circumstances as I could have earned in a fair market, whether that income came from practicing law or marketing creative works, and with far less severe ancillary costs. For several decades the government overrode my natural consciousness using subliminal and hypnotic techniques and employed me in government operations without my consent. Government threatened to prosecute me for actions it caused, and created a general impression, among prospective employers, that these employers might be harming me by hiring me, placing me in jeopardy, without insurance or a plea agreement. I have sent out thousands of applications for alternate employment since 2000 without success. Government has by continuous assault interfered with my willingness to move about freely, and the condition of involuntary servitude was thus accomplished in part by false imprisonment. Government interfered with my

communications with potential employers. Government offered me various types of labor, in a fraudulent attempt to create the impression that I had choices, though each choice suffered from/suffers from the same flaw, i.e., Defendants and their co-conspirators are in every case the employers, and all employment involves exposing me to danger, using me in operations without my consent and controlling and/or influencing my consciousness throughout. The government routinely induced me to make important life choices, including housing decisions and pet ownership decisions, by making misrepresentations and concealing its intentions. I have not been compensated, in the form of wages or damages, for much, if any, of this use, and any amounts I have received incorrectly measure my real costs and loss of income. My condition has been 'involuntary', 'without choice', and 'compulsory'; and my will has been subverted in favor of the will of government officials and co-conspirators, and I have been deprived of resources and opportunities, and otherwise lack the liberty to determine courses of action or a way of life, facts yielding involuntary servitude as defined in United States v. Kozminski, 487 U.S. 931 (1988). The Kozminski Court interpreted 15 U.S.C. 1584, imposing criminal liability for involuntary servitude, to require the use or threatened use of physical or legal coercion. In a survey of cases the Court did not consider a case remotely like mine, or the possibility that, using

scientific techniques, government could plainly and unquestionably, though surreptitiously, create a condition of involuntary servitude.

In this case the government's interference has had a direct bearing on my ability to earn, as well as my ability to socialize, plan my own future, or even formulate my own thoughts.

In addition to this override of my consciousness, my right against servitude has been violated in another way: there has been a calculated effort, spanning decades, to remove my options, and a fraudulent effort to present the illusion of choice to decisionmakers. I don't believe the government can avoid liability on an involuntary servitude claim by replying that a citizen could have gone homeless, or lived on food stamps, and in my case the analysis should take into account related deprivations, of my first amendment intimacy rights and the right to work, and my privacy rights. In Kozminski the Court, offered "no conclusions...about the potential scope of the Thirteenth Amendment", Id.. I contend that an actionable Thirteenth Amendment deprivation occurs when government employs any means of coercion "that actually succeeds in reducing the victim to a condition of servitude", Id.. The Kozminski Court rejected this test for criminal cases, Id., understandably concerned that "judges would develop the standards for imposing criminal punishment on a case-by-case basis", Id. However,

this or a similar test may function effectively in adjudicating thirteenth amendment civil claims. While the Kozminski Court stated "whether other conditions are so intolerable that they, too, should be deemed to be involuntary is a value judgment that we think is best left for Congress", Id., this statement should be limited to interpreting section 1584, and the federal circuits have already developed the concept in civil cases. The Ninth Circuit has concluded that involuntary servitude occurs "when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform labor." Id., citing United States v. Mussry,726 F.2d 1448, 1453 (1984) and the Tax Court was obliged to consider that law. See Western And Southern Life Insurance Company v. Commissioner, 55 TC 1036 (1971) "*Of course*, we are constrained to give effect to our own precedents and to follow the decision of a circuit when the law has been established [by that circuit]" (emphasis added). Moreover, there has been an increase in the sophistication and pervasiveness of the entire government's efforts to create and exploit an imprest workforce. The Court should not shy away from interpreting the language of the constitution, and the first clause of the amendment demands interpretation. Assuming arguendo Congress has the exclusive authority to interpret the article, 18 U.S.C. § 1584 simply

delegates that responsibility back to the Court, referring to "any condition of involuntary servitude", a phrase that has simply been interpreted by reference to prior judicial decisions. The Court essentially deferred to older Supreme Court statements and statements made by lower courts. (Congress has subsequently broadened the concept of involuntary servitude See, e.g., 18 U.S.C. § 1589, which provides in part, "Whoever knowingly ...obtains the labor or services of a person...(3) by means of the abuse ... of law or the legal process...[is subject to criminal liability], a statute that appears to apply in my case.)

Government's also interfered with my first amendment rights related to thought and conscience. U.S. citizens have an *absolute* right to be free from government interference with conscience, thought, and belief. See Cantwell v. Connecticut, 310 U. S. 296 (1940); "the [First] Amendment embraces two concepts -- freedom to believe and freedom to act. The first is absolute..." ; see also 1 Annals of Cong. 434: "...nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." The Court has described freedom of conscience as "the central liberty that unifies the various Clauses in the First Amendment." See Wallace v. Jaffree, 472 U.S. 38 (1985), referring to "the right of freedom of thought protected by the First Amendment against state

action."

One could hold that the government's conduct yields estoppel in my case whether or not that conduct amounted to constitutional violations. Though it's perhaps dispositive, that there are constitutional provisions and a well-developed body of case law forbidding the government's conduct.

VI. Right To Work

Directly and by relying on its prior wrongdoing, government has also been interfering with my ability to practice law or "to engage in any of the common occupations of life...and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness" Board of Regents State Colleges et al. v. Roth, 408 U.S. 564 (1972), citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923). See also Lawson v. Sheriff of Tippecanoe County, 725 F.2d 1136, 1139 (7th Cir. 1984), Pleva v. Norquist, 195 F.3d 905, 915 (7th Cir. 1999).

VII. Due Process/IRS

The regulations designed to provide due process in IRS hearings are constitutionally inadequate and in any event were ignored. My IRS appeal was conducted by phone. There is apparently no mechanism for providing a mutually agreed upon statement as to what transpires at such hearings, and the government failed to keep adequate administrative records. See Morgan v. Sullivan, 908

F.2d 1426, 945 F.2d 1079 (9th Cir. 1990). The reviewing court must rely upon the subsequent characterizations of the parties, a serious impediment to due process.

While 26 C.F.R. § 301.6330-1 (i) provides "A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing", 26 U.S.C. § 6330(c)(2)(B) provides "The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person...did not otherwise have an opportunity to dispute such tax liability." 26 C.F.R. § 301.6330-1 impermissibly modifies that right, limiting tax challenges at the hearing to any tax period specified on the CDP Notice. When a statute is clear the agency interpretation must give way. King v. Collagen Corp., 983 F.2d 1130 (1st Cir. 1993) citing Hillsborough County v. Automated Medical Laboratories, 471 U.S. 707, 714 (1985). The statute is clear, as are the facts. In my request for a CDP hearing I sought review of tax debts for the years 2000-2005. The IRS inexplicably failed to provide final notices for the 2002 and 2005 tax years, though these years were clearly at issue and should have been considered. The IRS Decision Letter stated that Petitioner had "no right to dispute a decision by the Appeals Office under IRC §§ 6320 and/or 6330" for the years 1990, 1993, and 2001, ignoring the question of whether I ever the opportunity to dispute

these debts. The same equitable considerations that warranted the application of estoppel regarding years under consideration were relevant to the questions relating to the scope of the hearing. Among the factors preventing me from having a fair opportunity to dispute debts, regular assault, my understanding that the debt was being handled by such assault, shockingly powerful subconscious manipulation, fraudulent reports that led me to believe the debt was trivial given the amount of money I'd be earning, and, perhaps, a closed door to the courtroom—perhaps warranting the inference that I have not *yet* had the opportunity to contest these debts. For many years the courts inexplicably permitted deprivations of property without due process in the tax realm, though that practice has recently been specifically rejected. See Robinette v. Commissioner, F.3d 455 439 (8th Cir. 2006), "Prior to 1998, the IRS was permitted to collect a tax liability by levy against a taxpayer's property, without prior opportunity for a hearing or due process..." See also Shropshear v. Corporation Counsel of the City of Chicago, 275 F.3d 593, 597 (7th Cir. 2001) ("Equitable estoppel available where "[a]ny deliberate or blameworthy conduct by the defendant ... causes the Petitioner to miss the statutory deadline");

VIII. Unwarranted Reduction Of Rights/U.S. Tax Court

The Tax Court reviewed the 1990 and 1993 Decision Letters, citing Craig v. Commissioner, 119 T.C. 252 (2002). However Petitioner's estoppel and 6330(c)(2)(B) arguments related to the opportunity to dispute the debt, were not considered. My challenges to the 2001 2002 and 2005 tax levies should have been considered, and the failure of the Appeals Officer to make a 6330(c)(2)(B) inquiry or employ equitable principles, should have triggered Tax Court jurisdiction. 26 U.S.C. § 7442 provides that the Tax Court "shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926...or by laws enacted subsequent to February 26, 1926" The term 'enacted' is undefined and could refer to legislation, or to any legal act, including judicial pronouncements.

http://www.merriamwebster.com/dictionary/enact.

Tax Court Rule 1(a) provides that the Tax Court " may make and amend rules governing its practice and procedure"; see also 26 U.S.C. 7453, "the proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe", arguably permitting the Tax Court itself to employ equitable

principles to exercise jurisdiction. However it happens, the Tax Court must in some cases employ the tools of equity to exercise jurisdiction in order to preserve due process rights guaranteed by the constitution.

The Tax Court cited Commissioner v. McCoy, 484 U.S. 3 (1987) and Woods v. Commissioner, 92 T.C. 776, 784-787 (1989) for the proposition that the Tax Court may not exercise general equitable powers to expand that statutorily prescribed jurisdiction. In Woods the Tax Court noted that "the Supreme Court in McCoy based its statement about our lack of general equitable powers on Commissioner v. Gooch Milling & Elevator Co., 320 U.S. 418 (1943)". In United States v. Frances L. Dalm, 494 U.S. 596 (1990) the Supreme Court stated that "a careful reading of the Gooch Milling opinion, ...will show that it actually considered only the question of recoupment based on an overpayment in a year other than the year in dispute."

There is little similarity between refusing to apply equitable principles to exercise jurisdiction in Petitioner's case and refusing to consider equitable recoupment questions for a year not in dispute.

Declining equitable jurisdiction in a tax matter can yield a deprivation without due process of law. For example, the United States could advise a taxpayer that his or her tax notices were mistakenly generated, causing the individual to refrain from seeking a CDP hearing—and then refuse to schedule

a CDP hearing later, when collection activities had commenced, on the grounds the time had elapsed. The IRS, Tax Court, and 9th Circuit apparently accept that an individual in such a circumstance would only be eligible for an equivalent hearing, unreviewable even if the Appeals Officer refused to employ equitable principles or follow the law. My litigation rights should not be diminished by government fraud or error, and due process does require a hearing in which there's a meaningful attempt to follow the law, and a decision-maker who takes the hearing seriously.

The courts have made conflicting statements as to the limits of Tax Court jurisdiction. See, e.g., Estate of Branson v. Commissioner of Internal Revenue, 264 F.3d 904 (9th Cir. 2001), citing Freytag v. Commissioner , 501 U.S. 868, 891 (1991): "The Tax Court exercises its judicial power in much the same way as the federal district courts exercise theirs. This includes the authority to apply the full range of equitable principles generally granted to courts..."; "questions of Tax Court jurisdiction are to be resolved in the same manner as for an Article III court", Freytag v. Commissioner, supra, citing Clapp v. Commissioner of Internal Revenue 875 F. 2d 1396 (9th Cir. 1989), a Supreme Court statement trumping the assertion in David M. Kelley v. Commissioner, 45 F.3d 348 (9th Cir. 1995), "the Tax Court...cannot assert equitable powers in any way that could be construed as extending its jurisdiction"

a misleading characterization of judicial authority in any event. See also Stone v. White, 301 U.S. 532 (1937) and Bull v. United States, 295 U.S. 247, 261 (1935). In Bull the Court noted the unfairness of undue attention to the taxpayer's conduct in this arena: "It is apparently not the diligence of the taxpayer as to his legal rights which controls, but rather the inequity of holding that, while the government's rights under a transaction continue unimpaired, its adversary's rights thereunder are barred by limitations [citations]." This is, of course, in accord with the founders' attitude towards taxation.

The alternative to extending the Tax Court's jurisdiction would appear to be permitting the appellate courts to wield the tools of equity to exercise appellate jurisdiction over matters not considered by the Tax Court. Relying on equitable considerations to exercise jurisdiction is of course a common practice in federal courts; see, e.g., Hedges v. United States, 404 F.3d 744 (3d Cir. 2005). The Supreme Court has also considered issues not raised in lower courts in exceptional cases. See Hormel v. Helvering, 312 U.S. 552 (1941), Singleton v. Wulff, 428 U.S. 106, (1976), and Turner v. City of Memphis, 369 U.S. 350 (1962).

The Tax Court has occasionally asserted that it "only has such jurisdiction as is conferred upon it by statute" Estate of Rosenberg v. Commissioner, 73 T.C. 1014 (1980). However this statement is equally

true of federal courts, which "possess only that power authorized by Constitution and statute" Estate of Branson, supra. Such a statement of law is only as good as the reasoning supporting it, and pointing to a statutory basis for jurisdiction is simply not a basis for refusing to apply equitable principles.

IX. The General Availability Of Estoppel

Without citing law the IRS Appeals Officer refused to consider evidence establishing the appropriateness of estoppel to assert jurisdiction or negate tax debts. Judge Gerber affirmed, "the Appeals Officer's decision to reject the equitable estoppel argument was not arbitrary or capricious because Petitioner did not allege any affirmative misconduct by respondent", Appendix C, p. 59 citing cases refer to estoppel 'against the government.' At least one case freely interchanges 'against the commissioner' and 'against the government', Boatner v. Commissioner, 74 T.C.M. 342 (1997). Petitioner contends the doctrine is available against the government, to prevent tax collection by the government. The IRS, as an agent acting on behalf of a principal, the United States government, does not have any entitlement to tax dollars that goes beyond the entitlement of the federal government. Moreover, limiting the reach of estoppel to the actions of IRS employees enables fraudulent tax collection practices.

The Supreme Court has on a number of occasions

erroneously stated that it has never applied equitable estoppel against the government, see, e.g., Office Personnel Management v. Charles Richmond, 496 U.S. 414 (1990), though the Court applied estoppel in Stearns Company v. United States, 291 U.S. 54 (1933), a tax case: "He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned", see also a recent 9th Circuit case citing Stearns, Estate Of Hilda Ashman v. Commissioner Of Internal Revenue, 231 F.3d 541 (2000). See also Bachner v. Commissioner, 109 T.C. 125, 131 n.7 (1997): "In a Tax Court proceeding, either party is free to raise equity-based defenses to the assertions of the other party", See also Rodkey v. Commissioner Of Internal Revenue, T.C. Memo. 2009-238, "equitable estoppel will bar the Government where there has been affirmative misconduct resulting in a misrepresentation to the taxpayer..."; see also a 9th Circuit tax case involving equitable recoupment, equitable estoppel is available "against the government" upon a showing of "affirmative conduct going beyond mere negligence" Purcell v. United States, 1 F.3d 932 (9th Cir. 1993). The Tax Court was obliged to follow 9th Circuit law in deciding this question, Western And Southern Life Insurance Company v. Commissioner, supra; Estate of Branson v. Commissioner, 113 T.C. 6 (1999). Other cases acknowledging the availability of estoppel include Pediatrics v. Dep't of Health and Human Services,

567 F.3d 1202 (10th Cir. 2009): "we require the party claiming estoppel to show "affirmative misconduct on the part of the government"; Flight Attendants Against UAL Offset v. CIR, 165 F. 3d 572 (7th Cir. 1999): Estoppel and the tools of equity are readily available in the federal judiciary, and the Tax Court "operates pretty indistinguishably from a federal district court." see also Veterans of Foreign Wars v. United States, 1988 U.S. Dist. LEXIS 16985 (D. Mich.), United States v. Guy, 978 F.2d 934, 1992, Heckler v. Community Health Serv. of Crawford County, Inc., 104 S. Ct. 2218, 2228, (1984): "The Court has expressed a growing willingness to apply the doctrine of laches and equitable estoppel to the government" J. Rehnquist concurring, (majority gives "an impression of hospitality" towards claims of estoppel and laches), and In re Bernheim, 1989 U.S. Dist. LEXIS 1646 (1989), equitable estoppel appropriate "where the defendant asserted the statute of limitations defense after lulling the Petitioner with a false sense of security", and Pension Benefit Guar. Corp. v. White Consol. Indus., 72 F. Supp. 2d 547 1999, United States v. Lancaster, 898 F. Supp. 320 1995, Melrose Assocs., L.P. v. United States, 45 Fed. Cl. 56, (1999). Permitting the application of estoppel against the government is consistent with the Court's recent statements; see, e.g., John R. Sand & Gravel Co. v. United States, 552 U.S. 130 (2008). The presumption should be

that equitable estoppel and tolling are available unless Congress explicitly says otherwise.

X. Errors

--The IRS Appeals Officer Ignored My Declaration

I did not receive a fair hearing or impartial officer as required by 26 U.S.C. 6330(b). I provided evidence of a pattern of assault prior to the hearing. In my October 2006 request for a CDP hearing I contested tax debts for every year from 2000-2005, and placed the amount of tax debts at issue with the following language..."In the years 2000-2005 the community interfered with my earning potential and my health by constantly committing retaliatory battery..." and "the calculations you have provided for each year don't take into account the damage to my earning potential by the community" and noting 'at least hundreds, probably thousands' of tortious acts. Appendix, H, p. 83. The Appeals Officer ignored this evidence.

--The IRS Appeals Officer Did Not Consider Petitioner's Challenge To The Underlying Tax Debt

One might contest the existence or amount of a tax liability or obligation (http://www.merriam-webster.com/dictionary/liable) by pointing to offsets or by challenging the validity of a debt directly; during the hearing Petitioner sought to rebut allegations that Petitioner was evading taxes while conveying that Petitioner did not have a tax debt. See also Appendix G, p. 75 (Petitioner's First

Supplemental Trial Brief, page 3) "During the CDP hearing Blais was dismissive of Petitioner's assertion that estoppel applied, refusing to consider the facts or arguments at all, though even a short discussion would have demonstrated that the amount and existence of the underlying tax liability were at issue."

I clearly challenged the conclusion that I had a tax obligation. See Petitioner's October 9 2006 Declaration Appendix H, p. 83, Appendix C p. 66, Tax Court discussion of offsets.

--The Tax Court Incorrectly Refused To Consider The Entire Record

The court's statement that "Petitioner did not contest the existence or amount of his underlying tax liability at the CDP hearing, so we need not consider that issue" is thus incorrect and is not supported by the weight of the case law; the Tax Court is to apply de novo review to any *issues* raised at the hearing. Giamelli v. Commissioner, 129 T.C. 107 (2007) (distinguishing issues raised at the hearing from facts presented at the hearing); see also H. Conf. Rept. 105-599, at 266 (1998). My October 9 2006 declaration was part of the administrative record, Vierow v. Commissioner, T.C. Memo 2004-255, affd. 158 Fed. Appx. 926 (9th Cir. 2005), Thompson v. U.S. Dept. of Labor, 885 F.2d 551, 555 (9th Cir. 1989), and should have been considered by IRS Appeals and the Tax Court. Moreover, offsets were discussed at the hearing and

by the Tax Court. Whether or not the IRS or Tax Court can perform a calculation involving offsets, raising the offset issue must be considered a challenge to the existence or amount of a debt. Challenging the existence or amount of a debt triggers de novo review, and Petitioner was *obviously* entitled to such review. In presenting the issue to the Tax Court I demonstrated one way in which an equitable calculus could have been employed, explaining that the tax on my 15k income would be more than nullified by a 5k reduction in earning. My loss of income has been much more significant. The Tax Court ignored the issue by reviewing the IRS decision Moreover, 26 C.F.R. § 301.6330-1 specifically refers to "challenges to the appropriateness of the proposed levy" as a potential CDP 'issue'.

--The IRS Appeals Officer Refused To Consider Estoppel

The Appeals Officer was dismissive of my estoppel claim and refused to consider the relevant facts and arguments, stating "Evaluation of * * * [Petitioner's tort] claims is beyond the scope of this hearing", though *of course* consideration of estoppel requires evaluation of many of the same facts. The Appeals Officer was obliged to make an inquiry into facts supporting the application of estoppel, whether or not those facts also established FTCA claims for battery.

--The Tax Court Refused To Correct the Appeals Officers' Obvious Error

The Tax Court stated that "the Appeals Officer's declaration and the notices of determination themselves confirm that the claim was indeed considered." Appendix. No, they do not, as a careful reading of the Determination Letters demonstrates. The Appeals Officer did not permit me to develop my testimony related to battery and interference with employment opportunities, but instead stated that there was no evidence 'at this time' that my claims were likely to result in an award. Nevertheless, my request for a CDP hearing did contain a declaration setting forth such evidence, Appendix H, p. 83. There are any number of circumstances in which estoppel might be applied on facts that don't give rise to recovery in tort; e.g., a claim might be time-barred but relevant to an equitable analysis. Nevertheless the Tax Court stated that facts giving rise to estoppel "remained part of a plenary proceeding which, at the time of the Appeals hearing, had no bearing on the question of whether respondent could proceed with collection", echoing the Appeals Officer's language in the Letters of Determination. (All Notices of Determination and Decision Letters received by Petitioner had substantially similar formats and contained identical analysis. I've attached one Decision Letter and one Notice of Determination, Appendix A p. 46 & B, p. 53.) The examination of facts supporting estoppel is

independent of any tort claim in another forum. The suggestion that facts relevant to one claim won't be heard because they're relevant to another claim in another forum is bizarre. Petitioner does not know how the Tax Court could have thought otherwise, or how the 9th Circuit could have ratified such reasoning.

Petitioner has been unable to find other employment, despite sending out thousands of applications, including many low-paying jobs, probably related in part to remarks made by the courts defaming Petitioner and spread over the internet, and also related to government strongarm tactics. By constantly harming me and interfering with my privacy, the government has interfered with my ability to interact socially and engage in any sort of productive networking that might yield employment. "I'm not just a creatus, manufactured, conditioned, bred for a function.." Infinite Jest, David Foster Wallace, (Little, Brown, 1996). For several decades the government has permitted or intended regular assaults and regular manipulation of my consciousness, absolutely forbidden under the constitution.

--The Tax Court Refused To Consider Subsequent Evidence Of IRS Wrongdoing

Petitioner provided evidence of IRS wrongdoing in a motion for reconsideration, evidence that was ignored. Moreover, the Tax Court apparently could have examined its own records and taken judicial

notice of I.R.S. interference in Petitioner's life.

--The Courts Ignored A Well-Established Summary Judgment Principle

The Tax Court and the 9th Circuit ignored the well-established principle that the court must view all the evidence in the light most favorable to the nonmoving party." In re Barboza, 545 F.3d 702 (9th Cir. 09/23/2008), subverting this principle in favor of a reference to 'his wild assertions'; Appendix, page 11, a defamatory characterization to the extent it implies my claims are frivolous, and a dismissive treatment of my statements, over the course of several years, asserting my right to self-determination, and indicating I wouldn't accept battery as a cost of human interaction. Given the systemic failure to provide objective evidence of what is said at CDP hearings, the reviewing courts should have viewed evidence as to what happened at the hearing in my favor as well.

--The 9th Circuit Erred In Refusing To Take Judicial Notice Of My Statements

Petitioner sought judicial notice of prior in court statements made by Petitioner, not to demonstrate the truth of any matter set forth in any document, but to demonstrate that Petitioner had placed government agents and officials on notice of Petitioner's unwillingness to participate in a harm for benefits exchange. Compare Saher v. Norton Simon Museum of Art at Pasadena, No. 07-56691 (9th Cir. 2009), permitting notice of various

publications.... "as an indication of what information was in the public realm at the time." Perhaps the 9th Circuit panel believed that Petitioner's consent was irrelevant, and that Petitioner was impresst or for some other legal reason not in control of Petitioner's own life, though the court did not articulate such reasoning.

--The 9th Circuit Opinion Was Cursory

The Ninth Circuit rejected Petitioner's Judicial Notice Request with a single statement, rejected Petitioner's Request for Injunctive Relief with a single statement, and summarily affirmed the Tax Court's judgment with a single statement, in violation of its own precepts; see Valley Broadcasting v. United States District Court, 798 F.2d 1289, 1294 (9th Cir. 1986), "It is vital for a court clearly to state the basis for its ruling, so as to permit the appellate review of whether relevant factors were considered and given appropriate weight". I have not had access to relevant evidence and argument, and the failure to state such bases significantly hampers my ability to litigate.

XI. CONCLUSION

Petitioner presented other facts and analysis to the 9th Circuit under seal; consideration of these documents may render one or more of the above issues moot. In any event, the Court can "fashion some form of meaningful relief" In re Gould, No. NC-08-1100-JuMkD (9th Cir. 2009); see also Church

Scientology California v. United States and Frank S. Zolin, 113 S. Ct. 447 (1992). Meaningful relief in this context should include a ruling which accurately states and properly appreciates the harm the federal government has done to me, and negates what are essentially defamatory statements. More crucially, the Court has the authority to prevent the Tax Court's ruling from being invoked collaterally in cases Petitioner has brought in federal court.

Based on the foregoing, Petitioners respectfully submits that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the 9th Circuit decision.

Dated: August 7, 2010

Respectfully submitted,

Glen Broemer
9236 Bloomington Avenue
Bloomington MN 55425
(952) 881-0639

APPENDIX
A

May 2 2007

Internal Revenue Service
Appeals Office
195 Commerce Way Suite B
Portsmouth NH 03801

Department of the Treasury
Field Operations East, Area 2
Person to Contact:
Michael Blais
Contact Person ID#
04-55311
Refer Reply to:
AP:FE:PSM:MGB
Taxpayer Identification No."
[ ]
Tax Type/Form Number
Income/1040
Tax Period(s) Ended:
12/1990, 12/1993, 12/2001
In Re:
Due Process Appeal (Equivalent Hearing)

Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 of the Internal Revenue Code

Dear Mr. Broemer
We have reviewed the proposed collection action for the period(s) shown above. This letter is our decision

in your case. A summary of our decision is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

Your due process hearing request was not filled within the time prescribed under Section 6320 and/or 6330. However, you received a hearing equivalent to due process hearing except there is no right to dispute a decision by the Appeals Office in court under IRC sections 6320 and/or 6330.

Your case will be returned to the originating IRS office for action consistent with the decision summarized below and described on the attached page(s).

Summary of decision:

The collection action proposed in the 3/11/2001 and 4/9/2003 final notice of intent to levy will proceed.

Sincerely,

Mathew N McLaughlin
Appeals Team Manager

Attachment to Letter 3210: Glen Broemer [social security number]
Request not submitted timely under IRC section 6330

Type of Taxes	Tax Periods	Date of CDP Notice	Date of CDP Request
Income	12/1990, 12/1993	3-11-2001	10/10/2006
Income	12/2001	4-9-2003	10/10/2006

Summary and Recommendation
The taxpayer submitted a late "Request for a Collection Due Process Hearing." The hearing is conducted under "equivalent hearing" procedures.

Based on consideration of all issues raised during the hearing process and a review of the information available from the administrative record it is determined that the proposed collection action should proceed for the reasons more fully described below.

Brief Background
The taxpayer is indebted to the US Treasury for unpaid income taxes and statutory additions for the periods ended 12/31/1990, 12/31/1993, 12/31/2001, 12/31/2002, 12/31/2003 and 12/31/2005. Mr.

Broemer is also liable under IRC 6702 for a civil penalty for the period ended 12/31/2004. The total balance due as of the hearing date is $28, 072.00

The subject hearing request addresses the taxpayers' untimely request for a hearing in regard to the unpaid income tax for 1990, 1993, and 2001.

The 1990 and 1993 returns were prepared by IRS under the authority of IRC section 6020(b). The returns secured indicate that the tax was calculated on the basis of wages paid during the subject years. It is not clear if the taxpayer was in receipt of the statutory notice of deficiency although Notices of Federal Tax Lien were filed on 3-16-2001 and no appeal under IRC section 6320 was noted.

The 2001 return was submitted by the taxpayer. Mr. Broemer paid the reported tax due but the payment did not clear the bank. The balance due is the result of the bounced check and associated penalty and interest.

Matters Considered at the Appeals Hearing

I. Applicable Law and Administrative Procedures
IRC section 6201, 6303, 6322, 6331
The assessments, issuance of notice and demand and verification of the balance due as of the date of the final notice were verified using computer transcripts.

II. Other issues raised by the Taxpayer

No other issues were raised. The taxpayer indicates he is eager to challenge the IRS decision/determination in US Tax Court.

Prior Attempts to Contact

The urgent notices dated 11-29-1999 and 9-23-2002 advised the taxpayer that collection action may proceed if the subject taxes are not paid.

Issues Specific to this case

The taxpayer alleges that he was prohibited from submitting a timely request under IRC section 6330 by acts of the intelligence community and specifically the CIA. The taxpayer has been involved in litigation with the United States Government since 2001 alleging a variety of tortious acts. The Treasury Regulations under IRC section 6330 do not make any 'reasonable cause' type provisions for a late submission. The taxpayers request for 1990, 1003 and 2001 is treated as a request for an "equivalent hearing."

Prior Involvement

The appeals employee conducting the hearing has no prior involvement with respect to the taxes at issue.

II. Relevant Issues Presented by the Taxpayer

Challenges to the Existence or Amount of the Liability

The taxpayer did not challenge the amount or existence of the underlying tax liabilities.

Challenges to the Appropriateness of the Proposed Collection Action

At the telephonic hearing on 4-13-2007 the taxpayer states that the proposed collection action should not proceed against him while his claims against the government in the court are pending. He alleges that the government is prohibited under the doctrine of "estoppel" from pursuing the tax claims.

The court documents regarding the taxpayers claim were reviewed. The Federal District Court in Central California recently dismissed all but two of the charges against the government and its directors. The court is allowing the taxpayer to proceed regarding his breach of fiduciary duty and the emotional distress claims. There is no indication that the case is near resolution and there is no evidence at this time that the matter is likely to result in any monetary award to Mr. Broemer. The taxpayers' assets are not under control of the court. There is no indication that the collection statute is suspended under IRC section 6503. There is no known statutory bar against proceeding with collection of the subject tax liabilities.

Collection Alternatives Offered by the Taxpayer

The taxpayer did not submit any financial data and did not propose a collection alternative. He reiterated his position that the government is "estopped" from collecting any tax claims against

him because of the wrongful acts perpetrated against him by another federal agency. Evaluation of those claims is beyond the scope of the hearing. Inasmuch as those claims were reviewed for content they do not have a bearing on the delinquent and undisputed federal tax liabilities.

III. Balancing Efficient Collection and Intrusiveness

The decision to proceed with the proposed collection action balances the need for the efficient collection of the taxes with the taxpayers' legitimate concerns of intrusiveness because:

The balances due listed in the 3-11-2001 and 4-9-2003 final notice of intent to levy remain unpaid.

The IRS met the prerequisite statutory and administrative requirements to proceed by levy.

The taxpayers' assertion that the IRS is "estopped" from collection of the subject tax liabilities is not valid.

No collection alternatives were proposed. No financial data was provided.

B

May 2 2007

Internal Revenue Service
Appeals Office
195 Commerce Way Suite B
Portsmouth NH 03801

Department of the Treasury
Field Operations East, Area 2
Person to Contact:
Michael Blais
Contact Person ID#
04-55311
Refer Reply to:
AP:FE:PSM:MGB
Taxpayer Identification No."
[ ]
Tax Type/Form Number
Civil Penalty/6672
Tax Period(s) Ended:
12/31/2003
In Re:
Due Process Appeal (Tax Court)
CERTIFIED MAIL

Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330

Dear Mr. Broemer

We have reviewed the taken or proposed collection

action for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within 30 days from the date of this letter.

To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

The Tax Court has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed $50,000. You can also get information about this procedure by writing to the Tax Court, or accessing the Tax Court website at www.ustaxcourt.gov.

The time limit for filing your appeal is fixed by law. The courts cannot consider your case if you file late. If the court determines that you filed your petition with the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s).

If you have any questions, please call the person whose name and telephone number are shown above.

Summary of Determination
The collection action proposed in the 10-2-2006 final notice of intent to levy will proceed.

Sincerely,

Mathew N McLaughlin
Appeals Team Manager

Attachment to Letter 3193: Glen Broemer [social security number]
Request submitted timely under IRC section 6330

Type of Taxes	Tax Periods	Date of CDP Notice	Date of CDP Request
Income	12/31/2003	10/2/2006	10/10/2006

Summary and Recommendation

The taxpayer submitted a timely 'Request for a Collection Due Process Hearing' in response to the issuance of a final notice of intent to levy for unpaid income taxes for the tax year 12/31/2003.

Based on consideration of all issues raised during the hearing process and a review of the information available from the administrative record it is determined that the proposed collection action should proceed for the reasons more fully described below.

Brief Background

The taxpayer is indebted to the US Treasury for unpaid income taxes and statutory additions for the periods ended 12/31/1990, 12/31/1993, 12/31/2001, 12/31/2002, 12/31/2003 and 12/31/2005. Mr. Broemer is also liable under IRC 6702 for a civil penalty for the period ended 12/31/2004. The total balance due as of the hearing date is $28, 072.00

The subject hearing request addresses the taxpayers' untimely request for a hearing in regard to the unpaid civil penalty for tax period ended 12/31/2004 tax for 2003.

The taxpayer submitted the balance due income tax return reflecting a small underpayment.

Matters Considered at the Appeals Hearing

I. Applicable Law and Administrative Procedures

IRC section 6201, 6303, 6322, 6331

The assessments, issuance of notice and demand and verification of the balance due as of the date of the final notice were verified using computer transcripts. No irregularities are noted.

Prior Attempts to Contact

The urgent notice dated 08/07/2006 advised the taxpayer that additional collection action would proceed if the balance remained unpaid.

Prior Involvement

The appeals employee conducting the hearing has had no prior involvement with respect to the taxes at issue.

II. Relevant Issues Presented by the Taxpayer

Challenges to the Existence or Amount of the Liability

The taxpayer did not challenge the amount or existence of the underlying tax liabilities.

Challenges to the Appropriateness of the Proposed Collection Action

At the telephonic hearing on 4-13-2007 the taxpayer states that the proposed collection action should not proceed against him while his claims against the government in the court are pending. He alleges that the government is prohibited under the doctrine of "estoppel" from pursuing the tax claims.

The court documents regarding the taxpayers claim were reviewed. The Federal District Court in Central California recently dismissed all but two of the charges against the government and its directors. The court is allowing the taxpayer to proceed regarding his breach of fiduciary duty and the emotional distress claims. There is no indication that the case is near resolution and there is no evidence at this time that the matter is likely to result in any monetary award to Mr. Broemer. The taxpayers' assets are not under control of the court. There is no indication that the collection statute is suspended under IRC section 6503. There is no known statutory bar against proceeding with collection of the subject tax liabilities.

Collection Alternatives Offered by the Taxpayer

The taxpayer did not submit any financial data and did not propose a collection alternative. He reiterated his position that the government is "estopped" from collecting any tax claims against him because of the wrongful acts perpetrated against him by another federal agency. Evaluation of those claims is beyond the scope of the hearing. Inasmuch as those claims were reviewed for content they do not have a bearing on the delinquent and undisputed federal tax liabilities.

Other Issues Raised by the Taxpayer

No other issues were raised. The taxpayer indicates he is eager to challenge the IRS

decision/determination in US Tax Court.

III. Balancing Efficient Collection and Intrusiveness

The decision to proceed with the proposed collection action balances the need for the efficient collection of the taxes with the taxpayers' legitimate concerns of intrusiveness because:

The balances due listed in the 10/12/2006 final notice of intent to levy remain unpaid.

The IRS met the prerequisite statutory and administrative requirements to proceed by levy.

The taxpayers' assertion that the IRS is "estopped" from collection of the subject tax liabilities is not valid.

No collection alternatives were proposed. No financial data was provided.

C

UNITED STATES TAX COURT

GLEN ROBERT BROEMER, Petitioner v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 12000-07L. Filed March 31, 2009.

Glen Robert Broemer, pro se.

Michael W. Tan, for respondent.

MEMORANDUM OPINION

GERBER, Judge: This matter is before the Court on respondent's motion for summary judgment under Rule 121.1 FN 1

FN1 Petitioner also filed a motion to compel

responses to interrogatories pursuant to Rule 71, which is addressed in this opinion. Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code. T.C. Memo. 2009-72

Respondent seeks summary judgment on the question of whether collection may proceed in accordance with notices of determination sent to petitioner. Respondent made the determination to proceed to collect by levy petitioner's 1990, 1993, and 2003 tax liabilities and a frivolous return penalty for 2004. Petitioner seeks review of that determination under section 6330.

The issues for consideration are: (1) Whether respondent's determination to proceed with collection was an abuse of discretion and (2) whether petitioner's motion to compel responses to interrogatories was timely or appropriate.

Petitioner resided in California at the time his petition was filed. He failed to file Forms 1040, U.S. Individual Income Tax Return, for his 1990 and 1993 tax years. For each year respondent prepared substitutes for returns under section 6020(b) and determined deficiencies in income tax with additions to tax. Although petitioner was sent statutory notices of deficiency, he did not petition this Court in response to those notices. Respondent assessed the deficiencies with additions to tax and

interest and on March 16, 2001, filed notices of Federal tax lien. Petitioner did not seek review of respondent's actions under section 6320. Respondent's records indicate that
the hearing was treated as an equivalent hearing for 1990 and 1993. However, respondent was unable to produce a certified mail list proving the CDP notices were sent and conceded the timeliness of petitioner's CDP request. Under Craig v. Commissioner, 119 T.C. 252 (2002), the equivalent hearing is thus treated as a collection due process hearing (CDP). 3 The record does not indicate whether CDP notices were given to petitioner for the 2002 and 2005 tax years, and petitioner apparently did not request a CDP hearing for those years. For 2001, petitioner's CDP request was untimely, and respondent's determination is therefore not subject to review. collection due process (CDP) notices were mailed to petitioner on March 11, 2001.
Petitioner filed a late return for the 2003 tax year. Respondent determined additions to tax and interest for that year. Petitioner did not fully pay the assessed tax liability. On October 2, 2006, respondent sent petitioner a notice of intent
to levy for 2003. Petitioner filed a return for the 2004 tax year, but respondent deemed the return and accompanying statements to be frivolous. Respondent accordingly assessed a $500 penalty under section 6702. On October 2, 2006, respondent sent petitioner a notice of intent to levy for the 2004

frivolous return penalty. On October 10, 2006, petitioner requested a CDP hearing for 1990, 1993, 2003, and 2004. The CDP hearing 2 was conducted by telephone on April 13, 2007. At that time, petitioner's total unpaid tax liability for the 1990, 1993, 2001, 2002, 2003, 2004, and 2005 tax years was $28,072.3 At the CDP hearing petitioner did not contest the amount or existence of his tax liability. He raised only the issue of "estoppel". He argued that the proposed collection action should not proceed while he had claims pending against the Government
and that the value of those claims far exceeded the amount of his tax liability. He further contended that the wrongful acts of another Government agency "estopped" respondent from collecting his unpaid tax.
Petitioner's alleged claims against the Government stem from his belief that he is or was the victim of a far-reaching Government conspiracy that began no later than the 1970s. Petitioner has filed two suits in the U.S. District Court for the Central District of California for constitutional violations and
torts allegedly committed by the Government and its employees in furtherance of a conspiracy. Petitioner's District Court proceedings were combined into a single case. At the time of the CDP hearing, the District Court had dismissed the majority of petitioner's claims, leaving only three causes of action: Nuisance, intentional infliction of

emotional distress, and breach of fiduciary duty.
Petitioner's allegations in the District Court case are far reaching and involve the Central Intelligence Agency (CIA). Petitioner's allegations against the Government do not involve respondent or the Internal Revenue Service (IRS). For purposes
-5- The decision letters issued for 1990 and 1993 are treated as notices of determination under Craig v. Commissioner, supra. of deciding whether there was an abuse of discretion we need not decide the issues pending in the District Court proceeding. At the CDP hearing, petitioner did not provide any documentary proof of his allegations in the District Court case.
Respondent, however, examined documents from the District Court and noted that the court had dismissed the majority of petitioner's claims. Respondent determined that the District
Court case was not close to resolution and was unlikely to produce a monetary award to petitioner. Because petitioner had not submitted any financial data and had not proposed any alternatives, respondent decided to proceed with collection and issued notices of determination for the years in issue. 4 Petitioner filed a petition with the Court to seek review of respondent's determination to proceed with collection of the unpaid tax liabilities for the years in issue. Respondent moved for summary judgment, and a hearing was held on
September 8, 2008. Subsequently, on October 27,

2008, petitioner filed a motion to compel responses to interrogatories.

Discussion

I. Respondent's Motion for Summary Judgment

Summary judgment may be granted when there is no genuine issue of material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994). The opposing party cannot rest upon mere allegations or denials in his pleadings and must "set forth specific facts showing that there is a genuine issue for trial." Rule 121(d). The moving party bears the burden of proving there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). In this case, there is no dispute about a material fact and, accordingly, the issues may be decided on the basis of a summary judgment motion.

If a taxpayer neglects or refuses to pay a Federal income tax liability within 10 days after notice and demand for payment, the Commissioner may collect the tax by levy upon the person's property. Sec. 6331(a). The Commissioner generally must provide the taxpayer written notice of the right to a hearing before the levy is made. Sec. 6330(a). Upon a timely request, the taxpayer is entitled to an administrative hearing before an impartial officer or employee of

the Appeals Office. Sec. 6330(b). Following the hearing, the Appeals officer must determine whether the collection action is to proceed, taking into account the verification the Appeals officer has made, the issues raised by the taxpayer at the hearing, and whether the collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. Sec. 6330(c)(3). We have jurisdiction to review the determination if we have jurisdiction over the type of tax involved in the case. Sec. 6330(d)(1); Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Under section 6330(d), as recently amended, we have jurisdiction to consider the intent to levy for a frivolous return penalty
even though such penalties remain outside of our established jurisdiction for deficiency cases. We review on an abuse of discretion standard when the underlying tax liability is not in issue. Goza v. Commissioner, 114 T.C. 176, 182 (2000). Petitioner did not contest the existence or amount of his underlying tax liability at the CDP hearing, so we need not consider that issue. See Giamelli v. Commissioner, 129 T.C. 107 (2007); Magana v. Commissioner, 118 T.C. 488, 493-494 (2002); sec. 301.6330-1(f)(2), Q&A-F5, Proced. & Admin. Regs. Under the abuse of discretion standard, petitioner is required to show that respondent's actions were arbitrary, capricious, or without sound basis in fact.

See Knorr v. Commissioner, T.C. Memo. 2004-212. Respondent's determination to proceed with collection was based on petitioner's failure to present viable alternatives. The only issue or alternative petitioner raised at the CDP -8- hearing was "estoppel". Petitioner contends that the Appeals officer was dismissive of his "estoppel" claim and refused to consider the relevant facts and arguments. Though the notices of determination state "Evaluation of * * * [petitioner's] claims is beyond the scope of this hearing", the Appeals officer's declaration and the notices of determination themselves confirm that the claim was indeed considered. In determining whether that treatment of petitioner's "estoppel" claim was arbitrary or capricious, we note that petitioner has couched his claim in the form of two separate theories: Offset and equitable estoppel. A. Offset Petitioner had pending tort claims against various Government officials and agencies (which did not include the IRS). The argument petitioner presented to the Appeals officer was that the value of those claims exceeds and fully offsets the amount of his tax liabilities. He therefore claimed that respondent should be estopped from collecting his unpaid tax liabilities. The Tax Court is a Court of limited jurisdiction lacking general equitable powers. Commissioner v. McCoy, 484 U.S. 3, 7 (1987). While we may apply equitable principles in deciding matters over which we are specifically

granted jurisdiction, we may not exercise general equitable powers to expand that statutorily prescribed jurisdiction. Woods v. Commissioner, 92 T.C. 776, 784-787 (1989). At the time of the CDP hearing petitioner's tort claims had not been liquidated or established. Evaluating the Appeals officer's decision to reject his offset argument would require us to determine the merits and value of the underlying claims. None of the cases petitioner cites give the Court jurisdiction to adjudicate torts. Furthermore, we have previously held that we do not have jurisdiction to hear these types of offset claims. Watts v. Commissioner, T.C. Memo. 1995-196 (claim that taxpayer was given the office of president and owed "presidency wages"); Akins v. Commissioner, T.C. Memo. 1993-256 (claim that the Federal Government was liable for taxpayer's injuries due to negligent enforcement of criminal laws), affd. without published opinion 35 F.3d 577 (11th Cir. 1994); Randall v. Commissioner, T.C. Memo. 1993-207 (taxpayer-doctor's claim that another Government agency acted as third party's insurer and was liable for services rendered), affd. without published opinion 29 F.3d 621 (2d Cir. 1994). Petitioner argues that declining to hear the offset claim denies him an opportunity to be fully heard and deprives him of due process. In the case of an IRS levy, review is accomplished through the procedures provided in section 6330. Petitioner did receive the hearing he was entitled to and was

therefore given the opportunity to present whatever arguments he may have had. Having chosen not to avail himself of that opportunity and
present any supporting evidence, petitioner cannot now complain that he is being denied due process. Even if petitioner had presented evidence of his tort claims against other Government agencies, those claims were unproven and unliquidated and, at the time of his Appeals hearing, pending in the District Court. Though petitioner phrases his offset claim in terms of equity, essentially he is pursuing a claim for damages against the Government. His only venue for relief on such a claim is in District Court, where he already has two cases pending. We lack jurisdiction to consider such claims, and neither section 6320 nor 6330 provides jurisdiction to hear such claims. Likewise, the Appeals officer was not in a position to adjudicate whether petitioner's claims, against the Government had merit. More importantly, being unliquidated, petitioner's claims could not be considered as assets that would be part of a collection alternative.

B. Equitable Estoppel

Petitioner also argued that respondent was equitably estopped from collecting the unpaid tax because of the wrongful actions of the CIA. Petitioner did not claim that respondent had directly engaged in any wrongdoing. Thus, the Appeals officer's decision to reject the equitable estoppel argument was not
arbitrary or capricious because petitioner did not

allege any affirmative misconduct by respondent. See Wilkins v. Commissioner, 120 T.C. 109, 112 (2003); Norfolk S. Corp. v. Commissioner, 104 T.C. 13, 60 (1995), affd. 140 F.3d 240 (4th Cir. 1998). Petitioner presented several extraordinary theories attributing the CIA's alleged wrongdoing to respondent under color of agency law, but he provided no evidence to support his wild assertions. In sum, petitioner's allegations were unfounded and remained part of a plenary proceeding which, at the time of the Appeals hearing, had no bearing on the question of whether respondent could proceed with collection.

C. Conclusion

We lack the jurisdiction to consider petitioner's offset claim, and petitioner did not present the Appeals officer with a plausible claim for asserting offset or equitable estoppel. Because petitioner presented no other viable alternatives, respondent's determination to proceed with collection was not an abuse of discretion. For the reasons stated, we shall grant respondent's motion for summary judgment.

II. Petitioner's Motion To Compel

Petitioner served interrogatories on respondent after the filing of the summary judgment motion. He then moved to enforce responses to the interrogatories.

A motion to compel discovery must be filed no later than 45 days before the date set for call of the case from a trial calendar, unless otherwise authorized by the Court. Rule 70(a)(2). The date set for calendar

call was September 8, 2008. Petitioner filed his motion to compel after that date. Because petitioner's motion to compel was untimely, his motion will be denied. Significantly, a factual basis sufficient to decide the merits of this case is contained in the Court's official record, which includes pleadings, respondent's summary judgment motion and petitioner's response, trial transcript, and exhibits. To reflect the foregoing,

An appropriate order and decision will be entered for respondent.

D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GLEN BROEMER, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE. Respondent.	Tax Ct. No. 12000-07L ORDER

Before: SCHROEDER, PREGERSON and LEAVY, Circuit Judges.

Petitioner's motion to file the opening brief under seal is granted. The court is in receipt of petitioner's responses to this court's December 10, 2009 order to show cause. A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Accordingly, we summarily affirm the tax court's judgment. All pending motions are denied. AFFIRMED.

E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GLEN BROEMER, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Tax Ct. No. 12000-07L ORDER

Before: SCHROEDER, PREGERSON and LEAVY, Circuit Judges.

The motion to file a petition for rehearing and rehearing en banc and supplement thereto under seal is granted. See Cir. R. 27-13. The petitions for panel rehearing are construed as a motion for reconsideration of the panel's March 12, 2010 order. So construed, the motion is denied. See 9th Cir. R. 27-10. The petitions for rehearing en banc are construed as a motion for reconsideration en banc. So construed, the motion for reconsideration en banc is denied on behalf of the court. See 9th Cir. Gen. Ord. 6.11. No further filings shall be accepted in this closed case.

F

26 C.F.R. § 301.6330-1(e)

Matters considered at CDP hearing —(1) *In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the proposed levy have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed levy, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, *for any tax period specified on the CDP Notice* if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated

meaningfully in such hearing or proceeding.

Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing (emphasis added).

G

[Excerpt; pages 1-5; served October 8 2008]

Glen Broemer
5449 Lemon Grove
Los Angeles CA 90038
(323) 461-4038

UNITED STATES TAX COURT

Glen Broemer, Petitioner, vs. Commissioner of Internal Revenue, Respondent	Case No: 12000-07L **Petitioner's Supplemental Opposition to Respondent's Motion for Summary Judgment**

Introduction

Petitioner brought suit challenging the validity of government's determinations that he owed taxes for the years 1990, 1993, 2001, 2004, and 2005[1]. The

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[1] The IRS refused to review Petitioner's tax claims for the year 2001. Petitioner has sought reconsideration on that point, asserting the government is equitably estopped from claiming he was issued a valid notice re the 2001 claims, and that the government is otherwise prevented from asserting a right to collect on due process grounds. The Tax Court has ruled it does not have jurisdiction to decide this issue and that Petitioner is in the process of re-asserting his due process and estoppel

IRS filed a Motion for Summary Judgment for the years 1990, 1993, 2004 and 2005, and Petitioner opposed. Petitioner contests the validity of the underlying tax liability, contends the government wrongfully harmed him and interfered with his ability to earn, and contends the government owes him and not vice versa. Petitioner doesn't believe he has a tax debt but asserts in the alternative that any such debts are offset by valid legal claims against the government. Petitioner also notes that he was being physically harmed in connection with remarks that he was evading his taxes during the subject years, and that he has heard, over the years, a suggestion or two that he was tax exempt and heard in the nineties that government took care of his earlier tax debts. Exhibit A, attached to the Declaration of Glen Broemer, including Paragraphs 46, 132, 155, 157, 172, 173, 257, 319, 323, 330, 379. 399).

Standard of Review

Where the validity of the underlying tax liability is properly at issue, the Court will review the matter de novo. Where the validity of the underlying tax liability is not properly at issue, however, the Court will review the Commissioner's administrative determination for abuse of discretion. Sego v. Commissioner, supra at 610; Goza v. Commissioner,

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arguments in federal court.

114 T.C. 176, 180, 181 (2000).

It is well established that "The Tax Court, rather than being a 'reviewing court' within the meaning of Sec. 10(e) [of the APA] reviewing the 'record', is a court in which the facts are triable de novo". O'Dwyer v. Commissioner, 266 F.2d 575, 580 (4th Cir. 1959), affg. 28 T.C. 698 (1957).

Petitioner is Entitled to a Trial on the Merits

Petitioner contends that he has not yet had a meaningful hearing, was prevented from offering testimony, and that he is entitled to a trial on the merits. "The Tax Court has as its purpose the redetermination of deficiencies, through a trial on the merits, following a taxpayer petition. It exercises de novo review." *Sharon v. C.I.R.*, 952 F.2d 1400, 1991 U.S. App. LEXIS 31395 (9th Cir. 1992), affg. without published opinion T.C. Memo. 1990-604. See *Clapp v. Commissioner*, 875 F.2d 1396, 1403 (9th Cir. 1989)

Apparently Respondent seeks to limit the court's review to Blais' characterization of the CDP hearing and avoid contrary evidence in the administrative record or evidence Petitioner presents in these opposition papers. (Respondent's Motion, Paragraph 35) and would like the Tax Court to apply an abuse of discretion standard. ("The Petitioner has not challenged the existence or amount of the underlying liability. As a result, the appropriate standard of review is for abuse of discretion." (Respondents'

Motion, paragraph 30).

Petitioner is entitled to a de novo review of his claims. Petitioner's October 9 2006 declaration (responding to the IRS final notice of October 2 2006) contains the assertions "The federal government owes me far more than I owe the federal government, though determining the exact amount requires a lengthy examination of the evidence" ((Exhibit E, attached to the Declaration of Glen Broemer, paragraph 6), "I would not suppose the IRS is familiar with all the strategies and techniques employed by the intelligence community to interfere with my earning capacity" (paragraph 8), "In the years 2000-2005 the community interfered with my earning potential and my health..." and "the calculations you have provided for each year don't take into account the damage to my earning potential by the community" (paragraph 5). In Vierow v. Comm'r, T.C. Memo 2004-255, affd. 158 Fed. Appx. 926 (9th Cir. 2005), the Tax Court permitted the Commissioner to present at trial a certified mailing list that was not part of the administrative file. Affirming the U.S. Court of Appeals for the Ninth Circuit stated: "All of the documents the appeals officer reviewed during the collection due process hearing were part of the administrative record before the tax court." ...The 9th Circuit cited *Thompson v. U.S. Dept. of Labor*, 885 F.2d 551, 555 (9th Cir. 1989), which held that the administrative record includes "all documents

and materials directly or indirectly considered by agency-decision makers".

Petitioner believes he reiterated these arguments during the hearing though in any event he made them to the IRS in writing well in advance of the hearing.

During the CDP hearing Blais was dismissive of Petitioner's assertion that estoppel applied, refusing to consider the facts or arguments at all, though even a short discussion would have demonstrated that the amount and existence of the underlying tax liability were at issue.

One of Plaintiff's estoppel arguments might be made as follows: considering a hypothetical, suppose Petitioner earned 15k but should have earned 20k, and that the tax on 15k is 1500 and the tax on 20k is 2000. Petitioner's net income should have been 18k but it was only 15k as a direct result of government's tortious acts. Government is/has been involved in a tortious conspiracy[2]). That's an approximation of the facts that would be at issue if Petitioner were only considering lost wages as a mover, adding, e.g., that I was not getting as much work as other movers anyway, independent of my ability to perform the work, probably as a result of fraudulent

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[2] In California a conspiracy claim imputes the liability for each illegal act in the conspiracy to every defendant. Conspiracy Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 503

presentations to the judiciary[3]. The situation is quite a bit worse for government, though, as Petitioner contends that, but for this conspiracy, he would have earned A list money or decent attorney money, or perhaps philosophy professor money, and that instead of earning he was tortured. (Exhibit A, including Paragraphs 22, 29, 34, 49, 56, 57, 71, 72, 80, 86, 92, 96, 111, 114, 115, 139, Declaration of Glen Broemer, Paragraphs 88, 89, 90). Every Response Petitioner received from the IRS contained the language "[Petitioner] reiterated his position that the government is estopped from collecting any tax claims because of the wrongful acts perpetrated against him by another federal agency. Evaluation of those claims is beyond the scope of this hearing" or a simple "The taxpayers' [sic] assertion that IRS is 'estopped' from collection of the subject tax liabilities is not valid." (Respondent's Motion, Blais declaration, exhibits 12-14).

Petitioner was being physically harmed based on accusations of evasion and during the hearing wanted to make it clear that he believed in taxpaying generally. Petitioner agrees that taxable

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[3] In one of my entries, e.g., I spoke with a mover that says he "has as much business as he wants, 2-3 jobs a day if he wants" [while noting] "I post [my ad] 2x a day, nearly every day, don't have nearly that many opportunities..."

income is properly part of the equitable calculus; unfortunately for government, it's also part of the equitable calculus that Petitioner did not earn because he was suffering unjust physical harm and, on some occasions, being tortured.

Pursuant to IRC 6330(c)(3)(2) during the hearing the appeals officer is required to take into consideration "issues raised by the taxpayer"; Respondent contends that "the Appeals Officer addressed all issues properly raised by the taxpayer" (Respondent's Motion, Paragraph 34), though the Respondent is simply wrong regarding his assertions about the applicability of estoppel in Tax Court cases Additionally, in the past 16 months Plaintiff has uncovered more evidence of government concealment and has learned new facts that compel discussion of the underlying tax liability. In any event, there are certainly many instances where the Tax Court's consideration of evidence goes far beyond the matters presented at the CDP hearing. See Porter v. Commissioner Of Internal Revenue No. 13558-06 United States Tax Court 2008 U.S. Tax Ct. Lexis 10, ("Our longstanding practice has been to hold trials de novo in many situations where an abuse of discretion standard applies") .

Respondent mischaracterizes Magana; See Suzanne L. Porter, A.K.A. Suzanne L. Holman v. Commissioner Of Internal Revenue 130 T.C. No. 10 [2008] "Magana v. Commissioner, supra at 493, a case in which we reviewed the Commissioner's

determination under section 6330(d)(1) that tax lien filings were appropriate, we held that, absent special circumstances, the taxpayer could not raise before this Court an *issue* he had not raised in a hearing conducted by the Commissioner's Appeals Officer under section 6330(b) (emphasis added). See also Giamelli v. Comm'r, 129 T.C. 107 (2007).[distinguishing issues raised at the hearing from facts presented at the hearing], and Ewing v. Commissioner, 122 T.C. 32, 44 (2004): "We did not say in Magana that the taxpayer would be limited to the administrative record or that the taxpayer may not offer evidence in the proceeding in this Court." Petitioner raised the issue of estoppel and is entitled to make all estoppel arguments available to him.

Moreover, the IRS put the amount of the underlying tax liability for they years 2004 and 2005 at issue by deeming Petitioner's calculations 'frivolous.' That's an ironic assessment, insofar as government's own illegal conduct prevented Petitioner from calculating more precisely.[...]

H

[attached to Petitioner's Request for a CDP Hearing]

Declaration re the IRS 'Final Notice of Intent to Levy and Notice of Your Right to a Hearing' dated October 2 2006

I, Glen Broemer, am over the age of eighteen, a resident of California, and otherwise competent to testify. If called to testify I would do so as follows:

1) I've heard recently that a case of mine has been closed, though the case wasn't identified with particularity. If I hear from the IRS again on this matter I'll assume the case is open.

2) I've been petitioning in Federal Court, Central District of California, case 01-4340, and to the intelligence communities in the House and Senate documenting more than 20 years of tortious/illegal conduct by the intelligence community.

3) The record developed thus far demonstrates that the community illegally interfered with my personal relationships and my career plans and otherwise committed an amazing number of tortious acts, at least hundreds, probably thousands. (It isn't always clear that the community, as opposed to the citizenry, is doing the damage)

4) The community leaders, acting with retaliatory motives, actively supported and continues to support the practice of harming me illegally, and the community on the whole has interfered with my

attempts to seek other work and has taken steps to prevent me from finding work outside of the community.

5) The calculations you have provided for each year don't' take into account the damage done to my earning potential by the community.

6) In the years 2000-2005 the community interfered with my earning potential and my health by constantly committing retaliatory battery; these harms are well-documented in my petitions and, I believe, by inspectors in the community and the FBI.

7) The federal government owes me far more than I owe the federal government, though determining the exact dollar amount requires a lengthy examination of the evidence and a lot of calculation; it's beyond my ability to produce such figures in this letter though I've sought millions in FTCA claims and in my requests for damages.

8) The IRS should intervene in 01-4340 as an interested party, and make its claims there. I would not suppose the IRS is familiar with all the strategies and techniques employed by the intelligence community to interfere with my earning capacity, and I doubt the agency is in a good position to value my claims pertaining to physical harm and emotional distress.

9) Alternatively, I demand a tax hearing before a judge or commissioner qualified to hear and evaluate complex evidence connected to these intelligence activities; by and large I've been an unwitting and

unwilling party to these activities, and was involved by and large without my knowledge and/or without legally adequate, informed consent and/or by coercion.

10) I've been investigating the extent of the aforesaid illegal activities for a number of years and have made significant progress (producing proof of the statements made in my lawsuits) in the past few months.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Glen Broemer

October 9, 2006

Proof of Service

I am over the age of eighteen, am currently residing in Minnesota, and Petitioner in the above-captioned matter. On August 6, 2010 I mailed Glen Broemer's Petition for Certiorari to:

Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001

Korb, Donald L.
Acting Chief Counsel Internal Revenue Service
1111 Constitution Avenue, NW Washington, DC 20224

Hochman, Nathan J., Attorney
DOJ - U.S. DEPARTMENT OF JUSTICE
Tax Division/Appellate Section P.O. Box 502
Washington, DC 20044

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543-0001

I declare under penalty of perjury that the foregoing is true and correct.

Glen Broemer

August 6, 2010 Glen Broemer